

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
MARITEL, INC.	)	WT Docket No. 04-257
and	)	
MOBEX NETWORK SERVICES, LLC.	)	RM-10743
	)	
Petitions for Rule Making to Amend the	)	
Commission's Rules to Provide Additional	)	
Flexibility for AMTS and VHF Public Coast	)	
Station Licensees	)	

**SECOND MEMORANDUM OPINION AND ORDER**

**Adopted: November 21, 2011**

**Released: November 29, 2011**

By the Commission:

1. This *Second Memorandum Opinion and Order* dismisses an application for review of the *Order on Reconsideration*<sup>1</sup> in this proceeding, filed by Warren C. Havens (Havens) and associated parties (collectively, Petitioners).<sup>2</sup> The *Order on Reconsideration* denied Petitioners' petition for reconsideration of the *Memorandum Opinion and Order* in this proceeding,<sup>3</sup> which denied Petitioners' petition for reconsideration of the *Report and Order* in this proceeding.<sup>4</sup> For the reasons set forth below, we dismiss the application for review as procedurally defective.

2. The *Report and Order* amended the Commission's Rules to, *inter alia*, provide Automated Maritime Telecommunications System (AMTS) licensees additional operational flexibility by permitting them to offer private correspondence service to units on land.<sup>5</sup> The Commission rejected Havens's argument that the new operational flexibility should be granted only to geographic licensees, and not to site-based incumbent licensees.<sup>6</sup> In the *Memorandum Opinion and Order*, the Commission denied Petitioners' petition for reconsideration of this decision, noting that it has traditionally afforded AMTS site-based and geographic licensees the same flexibility and stating that any imbalance that Petitioners perceived with respect to these licensees' construction and coverage requirements was not

<sup>1</sup> MariTEL, Inc. and Mobex Network Services, LLC, *Order on Reconsideration*, WT Docket No. 04-257, 26 FCC Rcd 2491 (2011) (*Order on Reconsideration*).

<sup>2</sup> Application for Review or in the Alternative Section 1.41 Request (filed April 4, 2011, errata version filed April 5, 2011) (AFR). The AFR was filed by Havens, Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC (ITM), Verde Systems LLC, V2G LLC, and Telesaurus Holdings GB LLC. Maritime Communications/Land Mobile, LLC and Paging Systems, Inc. filed oppositions. Petitioners filed a reply.

<sup>3</sup> MariTEL, Inc. and Mobex Network Services, LLC, *Memorandum Opinion and Order*, WT Docket No. 04-257, 25 FCC Rcd 533 (2010) (*MO&O*). Petitioner V2G LLC was not a party to the petition for reconsideration of the *Memorandum Opinion and Order*.

<sup>4</sup> See Maritel, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971 (2007). The petition for reconsideration of the *Report and Order* was filed by Havens, AMTS Consortium LLC (Environmental LLC's predecessor-in-interest), ITM, and Telesaurus-VPC, LLC.

<sup>5</sup> See *id.* at 8976-78 ¶¶ 8-10.

<sup>6</sup> *Id.* at 8978-79 ¶ 12.

relevant to whether to treat them consistently with respect to their operational requirements.<sup>7</sup> In the *Order on Reconsideration*, the Commission denied Petitioners' petition for reconsideration of this decision, concluding that Petitioners' arguments concerning the character and fitness of individual site-based licensees, and the construction and operational status of their stations, was irrelevant to the general issue of whether the service rules should afford licensees additional operational flexibility.<sup>8</sup> Petitioners then filed an application for review of the *Order on Reconsideration*, which reiterates arguments made in their previous petitions and incorporates other pleadings by reference.

3. The Commission's Rules permit an aggrieved party to file an application for review of an action taken pursuant to delegated authority but do not authorize the filing of an application for review of a Commission-level action.<sup>9</sup> Because the *Order on Reconsideration* was issued by the Commission, we dismiss the application for review as unauthorized.<sup>10</sup> Moreover, if we were to treat Petitioners' submission as a petition for further reconsideration, it would be subject to dismissal as repetitious, because it seeks reconsideration of the denial of a previous petition for reconsideration and does not raise any new facts or issues of decisional significance.<sup>11</sup>

4. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 5, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 303(r), and Sections 1.41 and 1.115 of the Commission's Rules, 47 C.F.R. §§ 1.41 and 1.115, the application for review filed by Environmental LLC, Skybridge Spectrum Foundation, Intelligent Transportation & Monitoring Wireless LLC, Verde Systems LLC, V2G LLC, Telesaurus Holdings GB LLC, and Warren C. Havens on April 4, 2011 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>7</sup> See *MO&O*, 25 FCC Rcd at 537 ¶ 10. The *MO&O* also addressed other matters, which are not at issue in the AFR.

<sup>8</sup> See *Order on Reconsideration*, 26 FCC Rcd at 2492 ¶ 4.

<sup>9</sup> See 47 C.F.R. § 1.115(a) ("Any person aggrieved by an action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.").

<sup>10</sup> We similarly dismiss as unauthorized Petitioners' request in the alternative that its pleading be accepted under Section 1.41. See 47 C.F.R. § 1.41 (providing for the submission of informal requests for action "[e]xcept where formal procedures are required"). If viewed as a Section 1.41 request, Petitioners' submission should have been formally filed as a petition for further reconsideration, which, for the reasons specified herein, would have been subject to dismissal.

<sup>11</sup> See 47 C.F.R. § 1.429(i); see also, e.g., Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Memorandum Opinion and Order*, PR Docket No. 92-257, 25 FCC Rcd 5008, 5010 ¶ 4 (2010) (affirming the dismissal of Petitioners' repetitious petitions for reconsideration), *recon. pending*; Warren C. Havens, *Order on Reconsideration*, 25 FCC Rcd 511, 513 ¶ 6 (2010) (dismissing Havens's repetitious petition for reconsideration), *recon. dismissed*, *Order on Further Reconsideration*, 25 FCC Rcd 2123 (WTB MD 2010), *recon. pending*. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters. See *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964) (stating that "it is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken"), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965).